

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

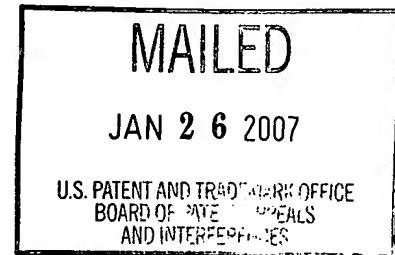
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte MICHAEL A. TREMBLAY

Appeal No. 2006-3042  
Application No. 10/720,494

ON BRIEF



Before THOMAS, SAADAT and MACDONALD, Administrative Patent Judges.

MACDONALD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-6, 8-14, 17, 18, and 24-31, which constitute all the claims pending in this application.

The disclosed invention pertains to an adaptive computer interface that automatically offers assistance based on a series of user events that are monitored, such as mouse movements, keystrokes, peripheral clicks, etc. If a series of user events is determined to be unrelated, the user is automatically

offered assistance. Such a system automatically identifies novice users and others needing help with a particular program and offers help accordingly.

Representative claim 1 is reproduced as follows:

1. A computer readable medium containing processor executable instructions for providing assistance to a user, comprising:  
code for monitoring user events;  
code for determining whether a series of user events is unrelated; and  
code for offering assistance to a user, wherein said code for offering assistance is operable upon determination by said code for determining that said series of user events is unrelated.

The examiner relies on the following references:

Wu	5,991,756	Nov. 23, 1999
Amro et al. (Amro)	6,339,436	Jan. 15, 2002 (filed Dec. 18, 1998)

The following rejections<sup>1</sup> are on appeal before us:

1. Claims 1, 8, 17, and 24-30 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Amro.

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<sup>1</sup> Because an ambiguity exists in the examiner's grounds of rejection, our statement of the rejections on appeal is based substantially on appellant's interpretation of the examiner's intent – an interpretation that we find reasonable based on the totality of the record and that the examiner acknowledged as correct [see brief, page 4; answer, page 2]. We disagree with appellant, however, with regard to claim 31. Since claim 31 depends from claim 18 – a claim presumed rejected under § 103(a) – claim 31 has been grouped accordingly. In any event, although the examiner's rejection under § 102(e) included only claims 1 and 24-26, we agree with appellant that the examiner apparently intended to include claims 8, 17, and 27-30 in the rejection. In particular, the examiner states that claims 8-14 and 27-29 "are essentially the same as claims 1-6 and 24-26" except for reciting a method rather than a computer readable medium [answer, page 6]. The examiner further notes that claims 17-19, 30, and 31 are "essentially the same as claims 1-6 and 24-26" except for reciting a system rather than a computer readable medium [id.]. Although it is unclear why these statements were made in connection with an obviousness rejection of claims 3-6 [see answer, page 5], we nevertheless conclude that the most reasonable interpretation of the examiner's actions in light of the commensurate limitations of the claims and the examiner's statements is that the examiner intended to reject claims 1, 8, 17, and 24-30 under § 102(e), and reject the remainder of the pending claims under § 103(a).

2. Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Amro.

3. Claims 3-6, 9-14, 18, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Amro in view of Wu.

Rather than repeat the arguments of appellant or the examiner, we make reference to the briefs and the answer for the respective details thereof.

#### OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellant's arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the disclosure of Amro does not fully meet the invention of claims 1, 8, 17, and 24-30. We also conclude that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 3-6, 9-14, 18, and 31. Accordingly, we reverse.

We first consider the examiner's rejection of claims 1, 8, 17, and 24-30 under 35 U.S.C. § 102(e) as being anticipated by Amro. Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the briefs have not been considered and are deemed to be waived [see 37 CFR § 41.37(c)(1)(vii)(2004)].

The examiner has indicated how the claimed invention is deemed to be fully met by the disclosure of Amro [answer, pages 3 and 4]. Regarding independent claims 1, 8, and 17, appellant makes two main arguments. First, although Amro's dynamic help system monitors multiple events, Amro does not determine whether a series of events is unrelated. Rather, a discrete event is analyzed on its own to determine whether the event is a spy event or a user event [brief, page 6; reply brief, page 4]. Second, Amro only displays help text when an individual event is a spy event, but does not offer assistance when a series of events is unrelated. In short, Amro does not compare events with each

other, and therefore cannot determine whether a series of such events is unrelated [id.].

The examiner responds that when Amro's system determines that an event is neither a spy event nor a user event, it is therefore an "unrelated" event (*i.e.*, another type of GUI event) and handled accordingly as shown in Step 218 in Fig. 2 [answer, page 10]. The program then loops back to the beginning of the event handling loop to await the next event. The examiner adds that Amro's system monitors multiple events and displays help text corresponding to the current event of the multiple events (*i.e.*, a spy event) [answer, pages 10 and 11].

We will not sustain the examiner's rejection of independent claims 1, 8, and 17. We agree with appellant that Amro does not expressly or inherently determine whether a series of events is unrelated and offer assistance based upon that determination as claimed. At best, the events that are monitored in Amro (*i.e.*, spy events, user events, or "other events") are isolated events – events that are not compared with each other in succession and such comparison used as a basis to determine whether to offer assistance. Rather, each event is simply analyzed on its own to determine whether to offer assistance. That is, if the program determines that a spy event occurs, then the corresponding help text is displayed. If a user event occurs, then help text is displayed that the user can edit and update. If neither occurs, then the event is another type of GUI event that is handled accordingly [Amro, col. 2, line 63 – col. 5

3, line 13]. In each case, the monitoring program simply analyzes each event in isolation to determine the appropriate action.

Although the examiner raises an interesting point regarding the program's loopback feature as shown in the flowchart in Fig. 2 [answer, pages 10 and 11], we still fail to see how such a loopback function necessarily compares a series of events for unrelatedness, and then offers help upon such determination.

Beginning at Step 218, the first event would comprise an "other event" (GUI event) that is appropriately handled. Then, the program loops back to await the next event which, for this example, we presume is a spy event. Accordingly, help would be displayed. But help is displayed simply because the event was a spy event – not due to any comparison of the "other event" with the "spy event."

Although "spy events" and "other events" are arguably "unrelated" in the sense that they are different types of events, it is the event itself – not the comparison between a series of such events – that triggers help in Amro.<sup>2</sup>

Although we find that Amro does not anticipate claims 1, 8, and 17, we cannot say that no better prior art exists that would teach or suggest determining whether a series of user events is unrelated and offering assistance upon such determination. In this regard, the examiner should focus on specific programs that offer automatic help based on the user's actions (e.g., Microsoft Word's

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<sup>2</sup> Our conclusion holds even if the program handles different successive spy events which are arguably "unrelated" in the sense that they constitute different spy events. Although Amro searches for and displays the corresponding help text for a given spy event in Steps 206 and 210 (i.e., suggesting that different help text is offered for each unique spy event), each spy event is nevertheless assessed on its own to determine the appropriate help offered. The first spy event is simply not compared to the second spy event to determine whether they are unrelated as a basis for offering assistance as claimed.

Office Assistant feature that displays an animated paper clip icon responsive to certain user actions).<sup>3</sup> In any event, we cannot say that no better prior art exists. We can say, however, that no such prior art exists on this record.

For the above reasons, the examiner's rejection of independent claims 1, 8, and 17 will not be sustained. We likewise will not sustain the examiner's rejection of dependent claims 2 and 24-30 based on the disclosure of Amro.

With regard to the obviousness rejection of dependent claims 3-6, 9-14, 18, and 31, the examiner adds Wu to the teachings of Amro [answer, pages 5 and 6]. But since Wu does not cure the deficiencies noted above with respect to independent claims 1, 8, and 17, the obviousness rejection of claims 3-6, 9-14, 18, and 31 over Amro and Wu is also not sustained.

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<sup>3</sup> See e.g., "Office Assistant," Wikipedia, at [http://en.wikipedia.org/wiki/Office\\_assistant](http://en.wikipedia.org/wiki/Office_assistant) (last visited Dec. 1, 2006).

In summary, we have not sustained the examiner's rejection with respect to any of the claims on appeal. Therefore, the decision of the examiner rejecting claims 1-6, 8-14, 17, 18, and 24-31 is reversed.

REVERSED

JAMES D. THOMAS )  
Administrative Patent Judge )  
MAHSHID D. SAADAT )  
Administrative Patent Judge )  
ALLEN R. MACDONALD )  
Administrative Patent Judge )  
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Appeal No. 2006-3042  
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HEWLETT-PACKARD COMPANY  
INTELLECTUAL PROPERTY ADMINISTRATION  
P.O. BOX 272400  
FORT COLLINS CO 80527-2400